



**FINANCE AND ADMINISTRATION CABINET
DEPARTMENT FOR FACILITIES MANAGEMENT
DIVISION OF CONTRACTING AND ADMINISTRATION**

GENERAL CONDITIONS

These General Conditions apply to each section of the specifications and are binding upon the Contractor and all Subcontractors as each are subject to the provisions contained herein:

These General Conditions are intended to define and establish certain rules and provisions of the Contract governing the operation so that the Work may be continued and be completed in an orderly, expeditious and workmanlike manner.

These General Conditions, together with the specifications and Contract Documents, shall further establish the standards of material and workmanship for the Work.

- '1. **Definitions of Terms** Wherever used in these General Conditions or in other Contract Documents, the following terms have the meaning indicated which are applicable to both the singular and plural thereof:
- '1.1 **Agency** is the state government entity which utilizes the Work being contracted.
- '1.2 **Architect** is the person or entity, either architect, engineer, or consultant, who is identified as such in the Contract Documents and on the drawings or any replacement architect, engineer, or consultant identified by the Owner.
- '1.3 **Certification of Payment** is the Owners Progress Payment Forms, DOA-24 and DOA-25.
- '1.4 **Change Order** means a written order to the Contractor executed by the Owner and the Architect after execution of the Contract, directing a change in the Work and may include a change in the Contract Price or the Contract Completion Time, or any combination thereof.
- '1.5 **Contract** is the legal relationship, duties and obligations between the Owner and Contractor as evidenced by the Contract Documents for the Project.
- '1.6 **Contract Completion Time** is the number of calendar days between the Date of Commencement and the dates set for Substantial Completion and Final Completion of the Work, including any adjustments thereto, all as established in the Contract between Owner and Contractor.
- '1.7 **Contract Documents** include the Invitation for Bids, the Instructions to Bidders, the Payment and Performance Bonds, the General Conditions, the Special or Supplemental Conditions, the drawings, specifications, solicitation addenda, the contractors response to the solicitation, any written clarification of the response, the award document containing the Agreement between Owner and

Contractor, and modifications issued after execution of the Contract. Modifications include (1) Change Orders issued as provided in Article 14, and (2) Field Orders for minor changes in the work issued by the Architect as provided in Article 14. Documents not included or expressly contemplated in this Paragraph, 1.7, do not, and shall not, form any part of the Contract between the Owner and the Contractor.

- ‘1.8 **Contract Sum** means the sum stated in the Contract including any authorized adjustments thereto and is the total amount payable by the Owner to the Contractor for the performance of the Work under the Contract Documents.
- ‘1.9 **Contractor** means the person or entity with whom the Owner has executed the Contract for construction.
- ‘1.10 **Date of Commencement** is the date specified in the Contract as the date upon which the Contractor is authorized to begin work.
- ‘1.11 **Direct Expenses** is defined as “All items of expenses directly incurred by or attributable to a specific project, assignment or task” and “Direct costs consist of direct materials, direct labor, subcontract costs, and other miscellaneous direct costs such as bonding and equipment rentals, that are directly related to and can be specifically attributed to an individual contract.”
- ‘1.12 **Drawings** are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued , showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.
- ‘1.13 **Extra Work** as used in Article 14 is defined as Work not part of the existing Contract Documents which is being added to the Contract by Change Order.
- ‘1.14 A **Field Order** is a written order issued by the Architect which clarifies or interprets the Contract Documents, or orders minor changes in the Work which does not require a change under Article 14.
- ‘1.15 **Final Completion** is defined as the Work being acceptable under the Contract Documents and the Contract fully performed in accordance with the terms and conditions of the Contract Documents and the entire payment balance due the Contractor is due and payable.
- ‘1.16 **Final Completion Date** shall have the meaning as described to it in Paragraph 19.3.
- ‘1.17 **Notice of Intent to Award** is a written letter issued to the apparent successful contractor after acceptance of bid price, unit prices, subcontractors and equipment and materials to inform them of such acceptance and request the required additional documentation to initiate the Contract. **This is NOT an authorization to proceed.**
- ‘1.18 **Owner** means the Commonwealth of Kentucky, acting through the Finance and Administration Cabinet and its Administrative Agent, the Department for Facilities Management.
- ‘1.19 The **Project** is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner or by separate Contractors.
- ‘1.20 **Resident Observer** means and individual who has a direct contract with the Owner to observe and report on activities at the work site. A Resident Observer employed by the Owner is not authorized to serve as the Owners Representative, unless so designated by the Owner in writing.

- '1.21 **Shop Drawings** means drawings, completion diagrams, schedules, and other data specially prepared for the Work by the Contractor or any Subcontractor, lower tier subcontractors, manufacturer, supplier, or distributor to illustrate some portion of the Work.
- '1.22 **Subcontractor** means the person or entity having a direct contract with the Contractor for the performance of a part of the Work.
- '1.23 **Substantial Completion** is the point at which, as certified in writing by the Architect, the Project is at a level of completion in strict compliance with the Contract, and necessary approval by public authorities has been given, such that the Owner or the Agency can enjoy beneficial use or occupancy and can use, operate and maintain it in all respects, for its intended purpose. Partial use or occupancy of the Project shall not result in the Project being deemed substantially complete and such partial use or occupancy shall not be evidence of Substantial Completion.
- '1.24 **Substantial Completion Date** shall have the meaning as described to it in Paragraph 19.2.
- '1.25 The **Work** includes the construction and services required by the Contract Documents, whether completed or partially completed, and includes all labor, supervision, materials, equipment, services, and things provided or to be provided by the Contractor to fulfill the Contractor's obligations.

2. Intent and Interpretation

- '2.1 Anything that may be required, implied or inferred by the documents which make up the Contract, or any one or more of them, shall be provided by the Contractor for the Contract Sum;
- '2.2 Nothing contained in the Contract Documents shall create, nor be interpreted to create, privity or any other relationship whatsoever between the Owner and any person except the Contractor;
- '2.3 When a word, term, or phrase is used in the Contract Documents, it shall be interpreted or construed first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage;
- '2.4 The words "include", "includes", or "including", shall be deemed to be followed by the phrase, "without limitation".
- '2.5 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of the resulting Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of the resulting Contract;
- '2.6 In the event of any conflict, discrepancy, or inconsistency, the following shall control:
- '2.6.1 As between figures given on plans and scaled measurements, the figures shall govern;
- '2.6.2 As between large scale plans and small scale plans, the large scale plans shall govern;
- '2.6.3 As between plans and specifications, the requirements of the specifications shall govern;
- '2.7 **Meaning of Execution.** Execution of the Contract Documents by the Contractor is a representation that the Contractor has thoroughly examined the site of the Work, become familiar with the local conditions under which the Work is to be performed, and correlated personal observations with the requirements of the Contract Documents. Execution of the Contract Documents is a further

representation that Contractor has received, reviewed and carefully examined all of the Contract Documents, and has found them in all respects to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, the Contractor is fully qualified to act as the contractor for the Project and has, and shall maintain, any and all licenses, permits or other authorizations necessary to act as the contractor for, and to construct the Project.

'2.8 Prior Agreements. The Contract Documents supersede any and all prior discussions, communications, representations, understandings, negotiations or agreements between the Owner and the Contractor and the Agency and the Contractor.

'2.9 Contractor's Performance. The Contractor shall perform all of the Work required, implied or reasonably inferable from the Contract including, but not limited to, the following:

'2.9.1 Construction of the Project;

'2.9.2 The furnishing of any required surety bonds and insurance;

'2.9.3 The provision or furnishing, and prompt payment therefor, of labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling, or other utilities, required for construction and all necessary building permits and other permits required for the construction of the Project;

'2.9.4 The creation and submission to the Owner of detailed and comprehensive as-built drawings, depicting all as-built construction. Said as-built drawings shall be submitted to the Owner upon final completion of the Project and receipt of same by the Owner shall be a condition precedent to final payment to the Contractor.

'2.10 Time. All limitations of time set forth in the Contract Documents are material and are of the essence of the Contract.

'2.11 Intent of Contract Documents. The intent of the Contract Documents is to include all items necessary for the proper completion of the Work by the Contractor. Labor or materials which are evidently necessary to produce the desired results, even though not specifically mentioned in the Contract Documents, shall be included in the Work.

'2.12 Contract Documents Complementary, etc. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. In case of conflicts between the various Contract Documents, the order of precedence shall be as follows: (1) Addenda, (2) Division 1 - General Requirements of the Specifications; (3) Special Conditions, (4) General Conditions, (5) Technical provisions of the Specifications; (6) Drawings.

'2.13 Questions to Architect. In the event a question arises regarding the meaning or intent of the drawings and specifications, the Contractor shall report it at once to the Architect. The Architect shall furnish, with reasonable promptness, additional instructions, by means of drawings or otherwise, necessary for the proper execution of the work, consistent with the requirements of Article 3.

'2.14 Paragraph, titles or headings are for convenience only and form no operative part of the Contract.

'3. The Architect Unless otherwise directed by the Owner in writing, the Architect shall perform those duties and discharge those responsibilities allocated to the Architect in the Contract Documents. The duties, obligations and responsibilities of the Architect shall include, but are not limited to, the following:

'3.1 Owner's Representative. The Architect will be the Owner's Agent during construction and until

final payment has been made. The Architect will advise and consult with the Owner. In the event the Owner should find it necessary or convenient to replace the Architect, the Owner shall retain a replacement architect and the role of the replacement architect shall be the same as the role of the Architect.

- ‘3.2 Communication Through Architect.** Except as otherwise provided in the Contract Documents, the Owner’s instructions to the Contractor shall be forwarded through the Architect, and the Contractor’s communications with the Owner shall be through the Architect.
- ‘3.3 Review of Work.** The Architect shall approve, or respond otherwise as necessary concerning shop drawings or other submittals received from the Contractor. The Architect shall be authorized to refuse to accept work which is defective or otherwise fails to comply with the requirements of the Contract. If the Architect deems it appropriate, the Architect shall be authorized to call for extra inspection or testing of the work for compliance with requirements of the Contract. The Architect shall review the Contractor’s Payment Requests and shall approve in writing those amounts which, in the opinion of the Architect, are properly owing to the Contractor as provided in the Contract. The Architect shall perform those inspections required by the Owner.

- ‘3.4 Interpretation of Contract Documents.** The Architect shall be the interpreter of the requirements of the Contract Documents and the judge of the performance thereunder by the Contractor, subject to the provisions of Article 26.

Claims, disputes, and other matters in question that arise relating to the execution or progress of the Work shall be referred initially to the Architect for decision, which he will render in writing within a reasonable time. Either party may appeal the Architect’s decision to the Secretary of the Finance and Administration Cabinet in accordance with the provision of Article 26.

The Architect shall have authority to reject Work which does not conform to the Contract Documents. In the event of rejection, the Architect may recommend withholding payment to the Contractor for the rejected Work, and such recommendation shall give the Owner the authority to withhold payment for such Work.

- ‘3.5 Review of Shop Drawings, etc.** The Architect shall review and approve, or take other appropriate action upon Contractor’s submittals (such as Shop Drawings, product data, and samples) for conformance with the design concept and the information given in the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no delay. The Architect’s approval of a specific item shall not indicate approval of an assembly of which the item is a component. The Architect’s approval of Shop Drawings or samples shall not relieve the Contractor from his responsibility for any deviations from the requirements of the Contract Documents unless the Contractor has in writing called the Architect’s attention to such deviation at the time of submission and the Architect has given written approval to the specific deviation, nor shall any approval by the Architect relieve the Contractor from responsibility for errors or omissions in the Shop Drawings.
- ‘3.6 Preparation of Change Orders.** The Architect, in consultation with the Owner, shall prepare Change Orders. The Architect shall also have authority to order minor changes in the Work as provided in Article 14.2.
- ‘3.7 Final Inspections, Certification.** The Architect shall conduct inspections to determine the dates of Substantial Completion and Final Completion. The Architect shall also receive and forward to the Owner, for the Owner’s review, written warranties and related documents required by the Contract and assembled by the Contractor.
- ‘3.8 Payment Requests.** The Architect shall review the Contractor’s Payment Requests and shall

approve in writing those amounts which, in the opinion, of the Architect, are properly owing to the Contractor as provided in the Contract. The Architect's approval of payment requests shall not relieve the Contractor from his responsibility for any deviations from the requirements of the Contract Documents

- '3.9 The Architect shall be authorized to require the Contractor to make changes which do not involve a change in the Contract Sum or in the Contract Completion Time for the Contractor's performance consistent with the intent of the Contract.
- '3.10 The duties, obligations and responsibilities of the Contractor under the Contract shall in no manner whatsoever be changed, altered, discharged, released, or satisfied by any duty, obligation or responsibility of the Architect. The Contractor is not a third-party beneficiary of any Contract by and between the Owner and the Architect. It is expressly acknowledged and agreed that the duties of Contractor to the Owner are independent of, and are not diminished by, any duties of the Architect to the Owner.
- '3.11 The duties, obligations and responsibilities of both the Architect and the Contractor, under their respective Contracts, shall in no manner whatsoever be changed, altered, discharged, released, or satisfied by any duty, obligation or responsibility of the Resident Observer. It is expressly acknowledged and agreed that the duties of Contractor and/or Architect to the Owner are independent of, and are not diminished by, any duties of the Resident Observer to the Owner. A copy of the Resident Observers Duties, Responsibilities and Limitations are attached hereto and made a part thereof.

- '4. **Construction Schedule** The Contractor, within fifteen (15) days of the Date of Commencement shall prepare and submit for the Owner and Architect's approval a construction schedule for completing the Work. The schedule shall indicate the starting and completion dates of the various stages of the Work, shall not exceed time limits established by the Contract Documents for the various stages of Work, shall be updated monthly and furnished to the Owner and Architect, shall be related to the Work of any other contractors on the Project to the extent required by the circumstances, and shall provide for expeditious and practicable execution of the Work. The original schedule shall be accompanied by a proposed schedule of values as described in Article 18.1. The Contractor shall promptly notify the Architect and Owner if the Contractor is materially ahead of, or behind the updated construction schedule. Failure to so notify the Architect and Owner shall relieve the Owner from liability for damages caused by delay or impact. Strict compliance with the requirements of this paragraph shall be a condition precedent to payment to the Contractor, and failure by the Contractor to strictly comply with said requirements shall constitute a material breach of the Contract.

'5. **Shop Drawings; Submittals**

- '5.1 **Schedule for Submittals.** Prior to submission of the first application for payment and in sufficient time to allow the Architect reasonable time for review, the Contractor shall submit to the Architect a schedule of submittals which shall be coordinated with the construction schedule. The Contractor shall keep the schedule of submittals current.
- '5.2 **Submittals of Shop Drawings, Samples, etc.** The Contractor shall review, approve, and submit Shop Drawings, samples, and product data in accordance with the approved schedule as herein detailed. The Contractor's stamp of approval on any Shop Drawing or sample shall constitute a representation to Owner and Architect that the Contractor has either determined and verified all quantities, dimensions, field construction criteria, materials, catalog numbers, and similar data, or he assumes full responsibility for doing so, and that he has reviewed or coordinated each Shop Drawing or sample with the requirements of the Work and the Contract Documents.

The Architect shall review and approve, with reasonable promptness, the Shop Drawings, or return for corrections as required. The review and approval shall be for conformance with the design concept of the Project and for compliance with the information given in the Contract

Documents. The approval of a separate item will not indicate approval of the assembly in which the item functions.

The Contractor shall make any corrections required by the Architect for compliance to the Contract and shall return the required number of corrected copies of Shop Drawings and resubmit new samples until approved. The Contractor shall direct specific attention, in writing, or on resubmitted Shop Drawings, to revisions other than the corrections called for by the Architect on previous submissions.

Where a Shop Drawing or sample submission is required by the specifications, no related work shall be commenced until the submission has been approved by the Architect. A copy of each approved Shop Drawing and each approved sample shall be kept in good order by the Contractor at the site and shall be available to the Architect.

The Architect's approval of Shop Drawings or samples shall not relieve the Contractor from his responsibility for any deviations from the requirements of the Contract Documents unless the Contractor has in writing called the Architect's attention to such deviation at the time of submission and the Architect has given written approval to the specific deviation, nor shall any approval by the Architect relieve the Contractor from responsibility for errors or omissions in the Shop Drawings.

The Contractor shall maintain a submittal log which shall include, at a minimum, the date of each submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection.

- '6. **Documents and Samples at the Site** Unless otherwise provided in the Contract Documents, the Contractor shall be furnished, free of charge, sufficient copies of the drawings and specifications as are reasonably necessary for the execution of the Work. However, the number of free copies shall not exceed twenty (20) unless otherwise determined by the Department Project Architect/Engineer and Purchasing Officer. If the number of copies required exceed twenty (20) or the number established by the Department Project Architect/Engineer, they shall be purchased by the Contractor at production cost. The Contractor shall maintain at the site one record copy of the drawings, specifications, addenda, Change Orders and other modifications, in good order and marked currently to record changes and selections made during construction. Unless otherwise directed, the Contractor shall also keep approved Shop Drawings, product data, samples and similar required submittals on hand. These shall be available to the Architect and Owner as requested. Upon completion of the Work, the record documents described above shall be delivered to the Architect for submittal to the Owner along with the as-built drawings.
- '7. **Contract Documents Property of Owner** The Contract Documents, and each of them, as well as any other documents furnished by the Owner, shall remain the property of the Owner. The Contractor shall have the right to keep one (1) copy of the Contract Documents upon completion of the Project; provided, however, that in no event shall the Contractor use, or permit to be used, any portion or all of such Contract Documents on other projects without the Owner's prior written authorization.
- '8. **Supervision and Construction Procedures**
- '8.1 **Supervision of the Work.** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention so as to ensure expeditious, workmanlike performance in accordance with the requirements of the Contract Documents. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures. He shall be responsible for the acts and omissions of persons directly employed by him, as he is for Subcontractors and others under Article 17. He shall be responsible for coordinating all portions of the Work under the Contract unless the Contract Documents give other specific instructions concerning these matters.
- '8.2 **Obligation to Follow Contract Requirements.** The Contractor shall not be relieved of obligations

to perform the Work in accordance with the Contract Documents by the activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

- '8.3 The Contractor shall not perform Work without adequate plans and specifications, or, as appropriate, approved Shop Drawings, or other submittals. If the Contractor performs Work knowing or believing it involves an error, inconsistency or omission without first providing written notice to the Architect and Owner, the Contractor shall be responsible for such Work and pay the cost of correcting same.
- '8.4 All Work shall strictly conform to the requirements of the Contract Documents.
- '8.5 The Work shall be strictly supervised, the Contractor bearing full responsibility for any and all acts or omissions of those engaged in the Work on behalf of the Contractor.
- '8.6 The Contractor shall at all times enforce strict discipline and good order among his employees and Subcontractors and shall not employ on the Work any person not skilled in the Work assigned to him.
- '8.7 The Contractor shall employ and maintain at the Project site only competent supervisory personnel.
- '8.8 The Contractor shall have a continuing duty to read, examine, review, compare and contrast each of the Contract Documents, Shop Drawings, and other submittals and shall give written notice to the Owner and the Architect of any conflict, ambiguity, error or omission which the Contractor may find with respect to these documents before proceeding with the affected Work. The express or implied approval by the Owner or the Architect of any Shop Drawings or other submittals shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such approval be evidence of the Contractor's compliance with the resulting Contract. The Owner has requested the Architect to only prepare documents for the Project, including the plans and specifications for the Project, which are accurate, adequate, consistent, coordinated and sufficient for construction. HOWEVER, THE OWNER MAKES NO REPRESENTATION OR WARRANTY OF ANY NATURE WHATSOEVER TO THE CONTRACTOR CONCERNING SUCH DOCUMENTS. The Contractor again hereby acknowledges and represents that it has received, reviewed and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representations or warranties by the Owner concerning such documents, as no such representations or warranties have been or are hereby made.
- '8.9 **Superintendent.** The Contractor shall employ a qualified, competent superintendent and any necessary assistants who shall be in attendance at the Project site during performance of the Work. The Department reserves the right to approve the Superintendent selected by the Contractor. The superintendent shall have full authority to act in behalf of the Contractor and all instructions given to the superintendent shall be considered as given to the Contractor. It shall be the responsibility of the Contractor's superintendent to coordinate the work of all the Subcontractors.

The superintendent shall not be changed except under the following circumstances:

- '8.9.1 where the superintendent proves to be unsatisfactory to the Contractor or ceases to be in his employ, in which case the Contractor shall give timely prior written notice to the Owner of the impending change in superintendent and a reasonable explanation for the change; or
- '8.9.2 where the Owner has reasonable grounds for dissatisfaction with the performance of the superintendent and gives written notice to the Contractor of these grounds. The Contractor, upon receiving such written notice, shall replace the existing superintendent with a

successor, to whom the Owner has no objection.

'9. Labor, Materials

'9.1 Contractor Provisions. Unless otherwise stipulated, the Contractor shall provide and pay for all materials, supervision, labor, water, tools, equipment, light, power, temporary heat, hoist, supplies, appliances, transportation, and other facilities and things necessary for the execution and completion of the Work. In the event the Owner elects to make available the electric power, at no cost, to the Contractor for construction purposes, it shall not be utilized as a means for temporary heat.

'9.2 Contractor Warranty. The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will strictly conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

'9.3 Substitution - Materials and Equipment. Substitution of previously approved equipment and materials shall be considered only for the following reasons:

'9.3.1 unavailability of the material or equipment due to conditions beyond the control of the Contractor

'9.3.2 inability of the supplier to meet Contract schedule; or

'9.3.3 technical and immaterial noncompliance to specifications.

Inclusion of a certain, make or type of materials or equipment by the Contractor shall not obligate the Owner to accept such material or equipment if it does not meet the requirements of the plans and specifications. Substitutions not properly approved and authorized may be considered defective work. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials and equipment.

'9.4 Recycled Content

KRS 45A.520 mandates that every state agency require a minimum recycled content for those materials it purchases. In accordance with 200 KAR 5:330, all listed are to be offered by the awarded contractor ONLY as a recycled product. Except as provided in KRS 45A.510, construction related materials requiring a minimum recycled content include Building Insulation, Aluminum products, concrete, cement and steel products. For a complete listing of those items requiring minimum recycled content please refer to 200 KAR 5:330
<http://www.lrc.state.ky.us/kar/200/005/330.htm>

'10. Surveys, Permits, Fees, Notices, and Tests

'10.1 Owner-Furnished Surveys. The Owner shall furnish whatever surveys are specifically required by the Contract Documents. Approvals, assessments, easements for permanent structures or permanent changes in existing facilities, and utility tap-on fees shall be secured and paid for by the Owner, unless otherwise provided in the Contract Documents.

'10.2 Permits. Building, sewer, and water permits and similar kinds of permits required by local ordinances shall be obtained by the General Contractor, but no fee shall be charged to or paid by

the Contractor as the Commonwealth is exempt from such charges. The Contractor shall procure and pay for any necessary licenses to do business in the locale of the Work.

- '10.3 **Notices.** The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on the performance of the Work.
- '10.4 **Required Regulatory Tests and Inspections.** Regulatory agencies of the government having jurisdiction may require any Work to be inspected, tested or approved. The Contractor shall assume full responsibility therefor, including related costs, unless otherwise noted, and shall furnish the Architect the required certifications of inspection, testing or approval.
- '10.5 Any delays by governmental agencies in obtaining Permits, Notices, Required Regulatory Tests and Inspections (10.2, 10.3, 10.4) and not the fault of one of the parties shall be shared by the Contractor and Owner with appropriate time extensions only. Liquidated damages and Contractor compensation for such delays or impact are not applicable and shall not be payable.
- '10.6 **Payment for Tests.** Tests of materials, products and equipment in place, required by the Architect or the Owner, to prove quality standards shall be paid by the Contractor. Should results of testing indicate that construction is not in compliance with Contract Documents, the Contractor shall bear the cost of any additional tests of the materials, products or equipment.

The Contractor shall give the Architect timely notice of readiness of the Work for all inspections, tests or approvals.

'11. **Protection of Work, Property, Employees and Public**

- '11.1 **Safety Precautions and Programs.** The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Project.
- '11.2 **Safety of Persons and Property.** The Contractor shall continuously maintain adequate protection of all Work from damage and shall protect the Owner's property from injury or loss arising in connection with this Contract. He shall make good any such damage, injury, or loss, except such as may be directly due to errors in the Contract Documents or caused by agents or employees of the Owner. He shall adequately protect adjacent property as provided by law and the Contract Documents.

The Contractor shall take all necessary precautions for the safety of employees on the Work site, and shall comply with all applicable provisions of federal, state, and municipal safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to the premises where the Work is being performed.

The Contractor shall designate a responsible member of his organization on the Work site as safety officer whose duty shall be to enforce safety regulations. The name and position of the person so designated shall be reported to the Architect by the Contractor.

In an emergency affecting the safety of life, or of the Work, or of adjoining property, the Contractor, without special instruction or authorization from the Architect or Owner, shall act at his discretion to prevent such threatened loss or injury.

- '11.3 **Hazardous Materials.** In the event the Contractor unexpectedly encounters on the site material reasonably believed to be asbestos, polychlorinated biphenyl (PCB) or other classified hazardous substances/materials which have not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and Architect in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner

and Contractor if in fact the material is asbestos, polychlorinated biphenyl (PCB), or other classified hazardous substances/materials which have not been rendered harmless. The Work in the affected area shall be resumed in the absence of any classified hazardous substances/materials or when it or they have been rendered harmless.

- '12. Inspection of Work/Discovering and Correcting Defective or Incomplete Work** The Owner, the Architect, and their representatives shall at all times have access to the Work whenever it is in preparation or progress and the Contractor shall provide proper facilities for such access and for inspection. The Contractor shall be given timely notification in order to arrange for proper inspection of any Work performed outside of the normal working day or week.

If the specifications, the Architect's instructions, laws, ordinances, or any public authority require any Work to be specially tested or approved, the Contractor shall give the Architect timely notice of its readiness for inspection. Inspections by the Architect shall be made promptly.

In the event that the Contractor covers, conceals or obscures its Work in violation of the Contract or in violation of a directive from the Owner or the Architect, such Work shall be uncovered and displayed for the Owner's or Architect's inspection upon request, and shall be reworked at no cost in time or money to the Owner.

If any of the Work is covered, concealed or obscured in a manner not covered by the above paragraph, it shall, if directed by the Owner or the Architect be uncovered and displayed for the Owner's or Architect's inspection. If the uncovered Work conforms strictly with the Contract, the costs incurred by the Contractor to uncover and subsequently, replace such Work shall be borne by the Owner. Otherwise, such costs shall be borne by the Contractor.

The Contractor shall, at no cost in time or money to the Owner, correct Work rejected by the Owner or by the Architect as defective or failing to conform to the Contract. Additionally, the Contractor shall reimburse the Owner for all testing, inspections and other expenses incurred as a result thereof.

The Owner may, but shall in no event be required to, choose to accept defective or nonconforming Work. In such event, the Contract Price shall be reduced by the greater of (1) the reasonable costs of removing and correcting the defective or nonconforming Work, and (2) the difference between the fair market value of the Project as constructed and the fair market value of the Project had it not been constructed in such a manner as to include defective or nonconforming Work. If the remaining portion of the unpaid Contract Sum, if any, is insufficient to compensate the Owner for the acceptance of defective or nonconforming Work, the Contractor shall, upon written demand from the Owner, pay the Owner such remaining compensation for accepting defective or nonconforming Work.

- '13. Royalties and Patents** The Contractor shall pay all royalties and license fees and shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof.

- '14. Changes in the Work/Change Orders**

'14.1 Change Orders. One or more changes to the Work within the general scope of the Contract may be ordered by Change Order. The Contractor shall proceed with any such changes, (including additions, reductions, deletions, other revisions), and same shall be accomplished in strict accordance with the following:

Change Order means a written order to the Contractor executed by the Owner and the Architect after execution of the Contract, directing a change in the Work and may include a change in the Contract Price, or the Contract Completion Time, or any combination thereof.

Any change in the Contract Sum resulting from a Change Order shall be determined by one of the

following methods:

- (1) by mutual agreement of a lump sum amount between the Owner and the Contractor as evidenced by (a) the Change in the Contract Sum being set forth in the Change Order, (b) such change in the Contract Sum, together with any conditions or requirements relating thereto, being initialed by both parties and (c) the Contractor's execution of the Change Order;
- (2) by unit prices stated in the Contract Documents or subsequently agreed upon; or
- (3) If no mutual agreement occurs between the Owner and the Contractor, the Change in the Contract Sum, if any, shall be derived by determining the reasonable actual costs or savings achieved resulting from revisions in the Work.

Items (1) and (3) above shall include a component for all overhead, profit, indirect costs or other items not to exceed fifteen percent (15%). Any such costs or savings shall be documented in the format, and with such content and detail as the Owner or the Architect requires. The Contractor shall only receive one fifteen percent (15%) for the "jobsite overhead and profit" component whether such work be done by the Contractor or by his Subcontractor.

For all charges relating to any Change Order, whether determined under subparagraph 1, 2 or 3 above, the following provisions shall apply:

- (1) The Contractor shall keep and present in such form as the Architect may direct, a correct account of all items in such form comprising the net cost of such Work, together with vouchers. The determination of the Architect shall be final upon all questions of the amount and cost of Changes in the Work, and it shall include in such cost, the cost to the Contractor of all materials used, of all labor, common and skilled, or foremen, trucks and teams, and the fair rental of all machinery used and for the period of such use. If said Work requires the use of machinery not already upon the work or to be otherwise used upon the Work, then the cost of transportation of such machinery to and from the Work shall be added to the fair rental, but said transportation shall not cover a distance exceeding one hundred (100) miles.
- (2) The Architect shall not include in the net cost of Work any cost or rental or small tools, or any portion of time of the Contractor or his Superintendent, or any allowance for the use of capital, or any additional bond premium, insurance cost applicable to the Work or any actual or anticipated profit, or any job or office overhead not previously mentioned, these items being considered as being covered by the added fifteen (15%) percent for the jobsite overhead and profit component.
- (3) In all cases where Changes in the Work are covered by unit prices set forth in the Contract, the value of such Work shall be determined only upon the basis of such unit prices.
- (4) Pending final determination of value, payments on Changes in Work shall be made only upon the estimate of the Architect.

If the Contractor claims that any instructions by the Architect involve additional cost and/or time extension, he shall give the Architect written notice thereof **within a reasonable time after the receipt of such instructions and before proceeding to execute the change in Work.**

On all Change Orders that exceed \$25,000 the Contractor shall submit the following certification:

"I (the Contractor) certify to the best of my knowledge and belief, the cost or pricing data submitted

is accurate, complete and current as of the date of the proposed change.”

If the Owner and Contractor cannot agree on the effect of an ordered change on the adjustment to the Contract Sum or Contract Completion Time, this matter may also be referred to the Architect for determination.

If the Owner and/or Contractor do not agree with the Architect’s determination regarding the valuation of a change, the related adjustment to the Contract Sum or to the Contract Completion Time, the matter shall be subject to the disputes procedure set out in Article 26.

The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor’s agreement to the ordered changes in the Work, the resulting Contract as thus amended, the Contract Sum and the time for performance by the Contractor. The Contractor, by executing the Change Order, waives and forever releases any claim against the Owner for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order.

The Contractor shall notify and obtain the consent and approval of the Contractor’s Payment and Performance Bond sureties with reference to all Change Orders if such notice, consent or approval are required by the Owner, the Architect, the Contractor’s sureties or by law. The Contractor’s execution of the Change Order shall constitute the Contractor’s warranty to the Owner that the sureties have been notified of, and consent to, such Change Order and the sureties shall be conclusively deemed to have been notified of such Change Order and to have expressly consented thereto.

’14.2 Minor Changes. The Architect may authorize minor changes in the Work which do not involve additional cost or extension of the Contract Completion Time, and which are not inconsistent with the intent of the Contract Documents. Such changes shall be effected by a Field Order issued by the Architect, which shall be binding on the Owner and Contractor. The Contractor shall carry out such orders promptly. However, if the Contractor claims that a Field Order involves additional cost or a delay to completion of the Work, he shall give the Architect written notice thereof within a reasonable time after receipt of the Field Order. Otherwise, he shall be deemed to have waived any right to claim an adjustment to the Contract Sum or to the Contract Completion Time.

’15 Project Records All documents relating in any manner whatsoever to the Project, or any designated portion thereof, which are in the possession of the Contractor, or any Subcontractor of the Contractor, shall be made available to the Owner or the Architect for inspection and copying upon written request by the Owner. Furthermore, said documents shall be made available, upon request by the Owner, to any state, federal or other regulatory authority and any such authority may review, inspect and copy such records. Said records include, but are not limited to all drawings, plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos, or other writings or things which document the Project, its design, and its construction. Said records expressly include those documents reflecting the cost of construction to the Contractor. The Contractor shall maintain and protect these documents for no less than ten (10) years after final completion of the Project, or for any longer period of time as may be required by law or good construction practice.

’16. Delays and Extensions of Time It is agreed that time is of the essence for each and every portion of the resulting Contract and where under the Contract an additional time is allowed for the completion of any Work, the new time limit fixed by such extension shall be of the essence of the Contract. Provided, that the Contractor shall not be charged with liquidated damages or any excess cost when the delay in completion of the Work is due to:

- (1) any preference, priority, or allocation order duly issued by the government;

- (2) unforeseeable cause beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God, or of the public enemy, acts of the Owner, acts of another contractor in the performance of a contract with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather; or
- (3) any delays of Subcontractors or suppliers occasioned by any of the causes specified in subsections (1) and (2) of this Article:

The Contractor shall, within fifteen (15) calendar days of the occurrence of the event, notify the Architect in writing. The Architect shall ascertain the facts and extent of the delay and notify the Contractor within a reasonable time of its decision in the matter. Any change in the Contract Completion Time resulting from any such claim shall be incorporated in a Change_Order. An extension of time shall not be construed as cause for extra compensation under the Contract. Extensions of time relating to concealed conditions as defined in Article 26 shall be governed by the provisions of that Article.

'17 Subcontractors

'17.1 Contractor Fully Responsible for Subcontractors. The Contractor is fully responsible to the Owner for the acts and omissions of his Subcontractors and of persons and entities either directly or indirectly employed by them.

Nothing contained in the Contract Documents shall create any contractual relationship between the Owner and a Subcontractor.

'17.2 Flow-down Requirement. By contract, the Contractor shall require each Subcontractor:

- (1) to be bound to the Contractor by the terms of the Contract Documents insofar as they apply to the Work to be performed by the Subcontractor; and
- (2) to assume toward the Contractor all the obligations which the Contractor, by the Contract Documents, assumes toward the Owner.

'17.3 Contracts with SubContractors. The Contractor shall contract with those Subcontractors listed in the Contractors Bid Response and deemed acceptable by the Owner in accordance with the procedure outlined in the Instruction to Bidders. All subcontracts shall afford the Contractor rights against the Subcontractor which correspond to those rights afforded to the Owner against the Contractor herein, including those rights of Contract termination as set forth herein.

'17.4 Substitution of SubContractors. The Contractor shall not contract with any substitute Subcontractor or change a Subcontractor without providing timely written notice of the proposed substitution to the Architect, Project Engineer and Purchasing Officer. The substitution shall not be made if the Owner, Architect, Project Engineer, or Purchasing Officer object in writing to such change.

'18. Payment The Owner shall make payments, less ten percent (10%) retainage, to the Contractor on the amount of the Work performed or materials furnished for the Work in accordance with the following procedures:

'18.1 Schedule of Values. At the same time it submits a construction schedule, within fifteen (15) days of the Date of Commencement, as provided in Article 4, the Contractor shall submit a Schedule of Values apportioning the Contract Sum among the different elements of the Project for purposes of periodic and final payment, prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The Contractor shall not imbalance its Schedule of Values, nor artificially inflate any element thereof. The violation of this provision by the Contractor shall constitute a material breach of the Contract. Upon written approval by the Architect and the Owner,

the Schedule of Values and construction schedule shall become the basis for the Contractor's Payment Requests during construction.

- '18.2 Application for Progress Payment.** Not more often than once a month, the Contractor shall submit to the Architect a signed application for payment (sometimes referred to as Payment Request), for the Work completed as of the date of the application and accompanied by such data and schedules as the Architect may reasonably require. Therein, the Contractor may request payment for ninety percent (90%) of that part of the Contract Sum allocable to Contract requirements properly provided, labor, materials and equipment properly incorporated in the Project. If payment is requested on the basis of materials and equipment not incorporated in the Project, but delivered and suitably stored at the Project site or at another location agreed to in writing by the Owner, the application for payments shall also be accompanied by such data, satisfactory to Owner, as will establish the Owner's title to the material and equipment and protect his interest therein, including written documentation of full insurance against loss or damage and the bonding of the storage sites. Storage sites must be bonded. Each subsequent application for payment shall include an affidavit of the Contractor stating that all previous progress payments received on account of the Work have been applied to discharge in full all of the Contractor's obligations reflected in prior applications for payment. Each Payment Request shall be signed by the Contractor and shall constitute the Contractor's representation that the quantity of Work has reach the level for which payment is requested, that the Work has been properly installed or performed in strict compliance with this Contract, and that the Contractor knows of no reason why payment should not be made as requested.
- '18.3 Approval of Payments.** The Architect shall review the application for payment and may also review the work at the Project site or elsewhere to determine whether the quantity and quality of the Work is as represented in the application for payment and is as required by this Contract. The Architect shall, within ten (10) working days after receipt of each application for payment, approve in writing the amount which, in the opinion of the Architect, is properly owing to the Contractor. The Owner shall make payment to the Contractor within twenty (20) working days following the Architect's written approval of each application for payment. A reasonable delay on the part of the Owner in making payment to the Contractor for any given payment shall not be a breach of contract. The amount of each such payment shall be the amount approved for payment by the Architect less such amounts, if any, otherwise owing by the Contractor to the Owner or which the Owner shall have the right to withhold as authorized by this Contract. The Architect's approval of the Contractor's application for payment shall not preclude the Owner from the exercise of any of its rights as set forth herein. The Contractor warrants and represents that, upon payment of the application for payment, title to all Work included in such payment shall be vested in the Owner.
- '18.4 Contractor's Warranty of Title.** The Contractor warrants and guarantees that title to all Work, materials and equipment covered by any application for payment, whether incorporated in the project or not, will pass to Owner at the time of payment free and clear of all encumbrance.
- '18.5 Retainage Reduction.** Ten (10%) percent retainage shall be withheld up to fifty 50% percent completion of the project and the full amount retained by the Commonwealth. Thereafter, based on satisfactory progress being made, no additional sums will be retained from sums earned through the remainder of the Project. If progress falls behind the approved schedule, the full 10% Retainage or increments thereof may be reinstated at the sole discretion of the Owner.
- '18.6 Completion, Acceptance and Final Payment.** Upon certification by the Architect of Substantial Completion of the Work, the Contractor shall continue to make normal pay requests as defined within this document. However, payment of Retainage withheld will not occur until Final Payment.

Final payment, shall be made by the Owner to the Contractor when the Contract has been fully performed by the Contractor in accordance with the Contract Documents and a final Certificate of

Payment is issued by the Architect. Such final payment shall be made by the Owner not more than 30 days after the issuance of the final Certificate of Payment.

The Contractor shall submit with the application for final payment an affidavit that all payrolls, bills for materials, supplies and equipment, and other indebtedness connected with the Work have been paid or otherwise satisfied, along with such supporting evidence of payment as the Architect requires. Final payment is conditioned on satisfactory compliance with this requirement.

'18.7 Waiver of Claims. The making of final payment shall constitute a waiver of all claims by the Owner except those arising from:

'18.7.1 unsettled liens;

'18.7.2 faulty or defective Work appearing after Substantial Completion;

'18.7.3 failure of the Work to comply with the requirements of the Contract Documents; or

'18.7.4 terms of any special warranties required by the Contract Documents.

The acceptance of final payment by the Contractor shall constitute a waiver of all claims except those previously made in writing and identified by the Contractor as unsettled at the time of the final application for payment.

'18.8 Contractor's Payment to Subcontractors. When payment is received from the Owner, the Contractor shall immediately pay all Subcontractors, materialmen, laborers and suppliers the amounts they are due for the Work covered by such payment. In the event the Owner becomes informed that the Contractor has not paid a Subcontractor, materialman, laborer, or supplier as provided herein, the Owner shall have the right, but not the duty, to issue future checks and payment to the Contractor of amounts otherwise due hereunder naming the Contractor and any such Subcontractor, materialman, laborer, or supplier as joint payees. Such joint check procedure, if employed by the Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the Owner to repeat the procedure in the future. The Contractor shall, by an appropriate agreement with each Subcontractor, require each Subcontractor to make payment to his subcontractors in similar manner.

The Architect may, on request, furnish to any Subcontractor information regarding the percentage of completion of the amounts applied for by the Contractor and the action thereon by the Architect.

Neither the Owner nor the Architect shall have any obligation to make payment to any Subcontractor except as may otherwise be required by law.

'18.9 Owner's Rights Relating to Payments. Neither payment to the Contractor, utilization of the project for any purpose by the Owner, nor any act or omission by the Owner shall be interpreted or construed as an acceptance of any Work of the Contractor not strictly in compliance with this Contract.

The Owner shall have the right to refuse to make payment and, if necessary, may demand the return of a portion or all of the amount previously paid to the Contractor due to:

'18.9.1 The quality of a portion, or all, of the Contractor's Work not being in accordance with the requirements of this Contract;

'18.9.2 The quantity of the Contractor's Work not being as represented in the Contractor's Payment

Request, or otherwise;

'18.9.3 The Contractor's rate of progress being such that, in the Owner's opinion, substantial or final completion, or both, may be unexcusably delayed;

'18.9.4 Claims made, or likely to be made, against the Owner;

'18.9.5 Loss caused by the Contractor;

'18.9.6 The Contractor's failure or refusal to perform any of its obligations to the Owner.

In the event that the Owner makes written demand upon the Contractor for amounts previously paid by the Owner as contemplated in this Paragraph, the Contractor must promptly comply with such demand.

'19. **Completion**

'19.1 ***Commencement and Completion of Work.*** The Contractor shall begin the Work on the Date of Commencement as specified in the Contract issued by the Owner. He shall diligently and expeditiously continue the performance of the Contract to and until Substantial Completion and Final Completion of the Project. The Contractor shall accomplish the Work in accordance with the construction schedule so as to achieve Substantial Completion and Final Completion dates as defined in the Contract Documents. All time limits stated in the Contract Documents are the essence of the Contract.

'19.2 ***Substantial Completion of the Work.*** The Substantial Completion Date shall be that date certified by the Architect in accordance with the following procedures.

'19.2.1 When the Contractor determines that Substantial Completion has been achieved, the Contractor shall notify the Owner and the Architect in writing. The notification shall be accompanied by a Contractor prepared list of those items of Work still to be completed or corrected. The failure of the Contractor to include any item or items on such list not completed or needing correction shall not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

'19.2.2 The Architect shall, within a reasonable time after receipt of notification from the Contractor of Substantial Completion, make such inspection to confirm that the Work has achieved Substantial Completion.

'19.2.3 Upon its confirmation that the Contractor's work is substantially complete, the Architect shall prepare a Certificate of Substantial Completion which shall establish the Substantial Completion Date and the responsibilities between the Owner and Contractor for security, maintenance, heat, utilities and insurance, if not otherwise provided for in the Contract Documents, and a tentative list of items to be completed or corrected, within thirty (30) calendar days from the Substantial Completion Date. The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of the responsibilities assigned to them in the certificate.

'19.2.4 If, after making the inspection, the Architect fails to find that the Contractor's Work has achieved Substantial Completion, he will notify the Contractor in writing, giving the reasons therefore.

'19.2.5 If the Architect through its inspection fails to find that the Contractor's Work has achieved Substantial Completion and is required to repeat all, or any portion, of its, the Contractor shall bear the cost of such repeat inspections which cost may be deducted by the Owner

from any payment then or thereafter due the Contractor.

'19.3 Final Completion of the Work. The Architect, upon receipt of written notice from the Contractor that the Work is finally complete and is ready for final inspection and acceptance, will promptly make such inspection and when he finds the Work completed and acceptable under the Contract Documents and the Contract fully performed, he will so notify the Contractor in writing and promptly issue a final Certificate of Payment to the Owner.

If the Architect is unable to issue its final Certificate of Payment and is required to repeat its final inspection of the Project, the Contractor shall bear the cost of such repeat inspection(s), which costs may be deducted by the Owner from the Contractor's final payment;

When the Owner accepts and occupies a building, all operations, maintenance, utilities and insurance become the responsibility of the Owner.

'19.4 Use of Substantially Complete Portions. The Owner may use or occupy a specified portion of the Work at any stage, provided that:

'19.4.1 such use or occupancy is consented to by insurers and

'19.4.2 it is authorized by public regulatory bodies having jurisdiction over the Work; and

'19.4.3 prior to such use or occupation, the affected portion of the Work is jointly inspected by the Owner, Contractor and Architect to determine the precise stage of completion.

Such possession and use shall not be deemed an acceptance of any Work not completed in accordance with the Contract Documents.

'19.5 Liquidated Damages

'19.5.1 The Contractor shall pay the Owner an amount identified in the Contract Documents for each and every calendar day of unexcused delay in achieving Substantial Completion and Final Completion beyond the date set for each.

Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing delay damages sustained by the Owner, estimated at the time of executing this Contract.

'19.5.2 When the Owner reasonably believes that Substantial Completion will be unexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving Substantial Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.

'20. Correction of Work

'20.1 Correction of Work Prior to Final Payment. The Contractor shall promptly correct Work which is rejected by the Architect as failing to conform to the requirements of the Contract Documents. Such correction shall be required regardless of whether or not the nonconformities are observed before or after Substantial Completion, or whether or not the work has been fully fabricated, installed or completed.

'20.2 Correction of Work After Final Payment. Neither the Final Certificate of payment nor any provisions in the Contract Documents shall relieve the Contractor of responsibility for failure to

conform to the requirements of the Contract Documents.

If within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct is promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. This period of one year shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. This obligation under this paragraph shall survive acceptance of the Work under the Contract and termination of the Contract. The Owner shall give such notice promptly after discovery of the conditions.

'20.3 Responsibility for Related Costs. In addition to being responsible for correcting the Work and removing any nonconforming Work or materials which are not corrected from the jobsite, the Contractor shall bear all other costs of bringing the affected Work into compliance with the Contract Documents. These include costs of any required additional testing and inspection services, Architect's services, and any resulting damages to property or to construction Work of other contractors or of the Owner.

'20.4 Correction by Owner. If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may take steps to correct the Work itself. If, within a ten (10) day period after receipt of written notice to correct the nonconformity, the Contractor has not made serious efforts to correct the nonconformity, the Owner may without prejudice to any other remedies it may have, proceed to correct the non-conforming Work.

In such cases a Change Order shall be issued by the Owner with the approval of the Architect reflecting an equitable deduction from the Contract Sum to cover the cost of correcting the Work, including compensation for the Architect's additional services and other related expenses and damages. The amount of the Change Order shall be deducted from payments then or thereafter due the Contractor. If final payment has already been made, the Contractor shall pay the difference.

'20.5 Ongoing Liability of Contractor for Defective Work. The foregoing provisions establishing the specific obligation of the Contractor to perform corrective Work do not establish a period of limitations on other obligations of the Contractor under the Contract Documents. Even after the Contractor is no longer specifically obligated to perform corrective Work itself, it shall still be held liable for nonconforming Work and for other breaches of its obligations under the Contract Documents.

'20.6 Deduction for Uncorrected Work. If the Owner deems it not expedient to correct Work which is not in accordance with the requirements of the Contract Documents, an appropriate Change Order shall be issued by the Owner with the approval of the Architect reflecting an equitable deduction from the Contract Sum on account of the uncorrected Work. The amount of the Change Order shall be deducted from payments then or thereafter due the Contractor. If final payment has already been made, the Contractor shall be responsible for paying the difference to the Owner.

'21. Suspension of Work

'21.1 Suspension by the Owner. The Owner shall have the right at any time to direct the contractor to suspend its performance, or any portion thereof for a period of not more than thirty (30) calendar days.-The notice of suspension shall be in writing and shall set forth the reason for the suspension. The written notice shall fix the approximate date on which Work is contemplated to be resumed. The Owner shall pay the Contractor as full compensation for such suspension the Contractor's Direct Job Expenses.

'21.2 Other Suspension. In the event the Owner should be prevented or enjoined by court order from proceeding with the Work or from authorizing its prosecution, either before or after the award, for a period up to ninety (90) days, the delay shall not constitute cause for termination by the Contractor and the Contractor shall not be entitled to make or assert claim for damage by reason of said delay, but time for completion of Work shall be extended to such reasonable time as the Owner may determine will compensate for time lost by such delay. Such determination shall be set forth in a Change Order shall be final and binding upon both parties, and shall not require the signature of the Contractor to be in effect.

The Owner shall pay the Contractor as full compensation for such suspension the Contractor's reasonable costs actually incurred and paid as follows:

'21.2.1 demobilization and remobilization, including such costs paid to subcontractors;

'21.2.2 preserving and protecting work in place;

'21.2.3 storage of materials or equipment purchased for the Project, including insurance thereon;

'21.2.4 performing in a later, or during a longer, time frame than contemplated by this Contract.

'21.3 Suspension by the Contractor. If, through no act or fault of the Contractor, the Work is suspended for a period of more than thirty (30) days by the Owner, or more than ninety (90) days under an Order of the Court or other public authority, then the Contractor may, after ten (10) days from delivery of a written notice to the Owner and the Architect, terminate the Contract and recover from the Owner payment for all Work executed and reasonable expenses sustained.

If the Architect has failed to act on a request for payment, within thirty (30) working days of submission, or if the Owner has failed to make any payment, within forty-five (45) working days of receipt of an approval application for payment, the Contractor may, upon ten (10) days written notice to the Owner and the Architect stop the Work until he has been paid all amounts then due, in which event and upon resumption of the Work, a Change Order shall be issued adjusting the Contract Price or extending the Contract Completion Time, or both, to compensate for the costs and delays attributable to the stoppage of the work, any such compensation being subject to the provisions, conditions and limitations contained in Article 26.

'22. Termination

'22.1 Termination of Contract for Convenience of Owner. The Owner, for any reason whatsoever, may terminate the Contract for its own convenience when it determines that such termination will be in the best interest of the Commonwealth of Kentucky. The Owner shall give written notice of such termination to the Contractor specifying when termination becomes effective. The Contractor shall incur no further obligations in connection with the Work and the Contractor shall stop Work when such termination becomes effective. The Contractor shall also terminate outstanding orders and subcontracts. The Contractor shall settle the liabilities and claims arising out of the termination of Subcontracts and orders. The Owner may direct the Contractor to assign the Contractor's right, title and interest under termination orders or subcontracts to the Owner or its designee. The Contractor shall transfer title and deliver to the Owner such completed or partially completed Work and materials, equipment, parts, fixtures, information and Contract rights as the Contractor has. The Commonwealth shall negotiate a fair and just settlement with the Contractor in accordance with 200 KAR 5:312 Section 2. In such event, the following procedure shall be required:

'22.1.1 The Contractor shall submit a termination claim to the Owner and the Architect specifying the

amounts due because of the termination for convenience together with costs, pricing or other data required by the Owner or the Architect. If the Contractor fails to file a termination claim within one (1) year from the effective date of termination, the Owner shall pay the Contractor, an amount derived in accordance with paragraph (3) below;

'22.1.2 The Owner and the Contractor may agree to the compensation, if any, due to the Contractor hereunder pursuant to 200 KAR_5:312 Section 2;

'22.1.3 Absent agreement to the amount due to the Contractor, the Owner shall pay the Contractor the following amounts:

'22.1.3.1 Contract prices for labor, materials, equipment and other services accepted under this Contract;

'22.1.3.2 Reasonable costs incurred in preparing to perform and in performing the terminated portion of the Work and in terminating the Contractor's performance, plus a fair and reasonable allowance for direct jobsite overhead and profit thereon (such profit shall not include anticipated profit or consequential damages); provided however, that if it appears that the Contractor would have not profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;

'22.1.3.3 Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to the initial Paragraph of 22.1. These costs shall not include amounts paid in accordance with other provisions hereof.

The total sum to be paid the Contractor under 22.1 shall not exceed the total Contract Sum, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

'22.2 Termination of Contract for Cause. If the Contractor should be adjudged as bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency or, if the Contractor does not perform the Work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable law, or otherwise commits a violation of a material provision of the resulting Contract, then the Owner, in addition to any other rights it may have against the Contractor or others, may terminate the performance of the Contractor upon ten (10) days written notice by registered mail of declaration of default and assume possession of the Project site and of all materials and equipment at the site and may complete the Work. In such case, the Contractor shall not be paid further until the Work is complete. After final completion has been achieved, if any portion of the Contract Sum, as it may be modified hereunder, remains after the cost to the Owner of completing the Work, including all costs and expenses of every nature incurred, has been deducted by the Owner, such remainder shall belong to the Contractor. Otherwise, the Contractor shall pay and make whole the Owner for such cost. This obligation for payment shall survive the termination of the Contract. In the event the employment of the Contractor is terminated by the Owner for cause pursuant to this Paragraph 22.2 and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under Paragraph 22.1 and the provisions of Paragraph 22.1 shall apply.

'23. Indemnification The Contractor shall indemnify and hold the Owner harmless from any and all claims, liability, damage, loss, cost and expense of every type whatsoever including, without limitation, attorneys' fees and expenses, in connection with the Contractor's performance of this Contract, provided that such

claims, liability, damage, loss, cost or expense is due to sickness, personal injury, disease or death, or to loss or destruction of tangible property (other than the Work itself), including loss of use resulting therefrom, to the extent caused by the Contractor, or anyone for whose acts the Contractor may be liable, regardless of whether such liability, claim, damage, loss, cost or expense is caused in part by the Owner.

'24. Insurance

'24.1 The Contractor shall furnish the Owner with certificates evidencing the required insurance coverage prior to commencing work. Contractor shall keep up-to-date copies of such certificates on file with Owner until work is completed. Owner may require Contractor to submit policy endorsements or complete policy copies of the required insurance.

'24.2 Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by Contractor, its agents, representatives, employees or subcontractors.

'24.3 Minimum Scope of Insurance

Coverage shall be at least as broad as:

24.3.1 Insurance Services Office commercial general liability coverage ("occurrence" Form CG 0001, Ed. 10/93).

24.3.2 Insurance Services Office Form CA 0001 (Ed. 12/93) covering automobile liability, Code 1 "any auto."

24.3.3 Workers' compensation insurance as required by the Workers' Compensation Act (as contained in KRS Chapter 342) and employers liability insurance.

'24.4 Minimum Limits of Insurance

Contractor shall maintain limits no less than:

24.4.1 Commercial General Liability:

\$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage with a \$3,000,000 annual aggregate.

24.4.2 Automobile Liability: \$500,000 combined single limit per accident for bodily injury and property damage.

24.4.3 Workers' Compensation and Employers Liability: Workers' compensation with statutory benefits without limit, as required by the Kentucky Workers Compensation Act, and employers liability limits of \$1,000,000 per accident.

'24.5 Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

'24.5.1 Commercial General Liability and Automobile Liability Coverages.

'24.5.1.1 Owner, its officers and employees are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the Contractor; general supervision of the work by Owner; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor, or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to Owner, its officers or employees.

'24.5.1.2 The Contractor's insurance coverage shall be primary insurance as respects

Owner, its officers and employees. Any insurance or self-insurance maintained by Owner shall be excess of the Contractor's insurance and shall not contribute to it.

'24.5.1.3 Any failure to comply with reporting provisions of the policies shall not affect coverage provided to Owner, its officers or employees.

'24.5.1.4 The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the insurer's liability.

'24.5.2 **All Coverages.** Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to Owner.

'24.6 Acceptability of Insurers

Insurance is to be placed with insurers with an A.M. Best's rating of no less than A VII, authorized to write insurance in the Commonwealth of Kentucky.

'24.7 Verification of Coverage

The Contractor shall furnish the Owner with certificates evidencing the required insurance coverage prior to commencing work. Contractor shall keep up-to-date copies of such certificates on file with Owner until work is completed. Owner may require Contractor to submit policy endorsements or complete policy copies of the required insurance.

'24.8 Subcontractors

Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

'24.9 The Contractor shall provide all Risks Insurance in an amount of not less than one hundred percent (100%) of the insurable value of all the work. The coverage, is to be written on CP00200695 or equivalent acceptable to the Commonwealth. All coinsurance clauses in the Risks Insurance policy will be waived. All rights of subrogation against the Owner (i.e. the Commonwealth) will be waived by the insurer. Such insurance shall be for the benefit of the Contractor, Owner and any Subcontractor engaged on this project, as the Owner shall find their respective interest may appear. The Risks Insurance must be dated and in force on the date indicated in the Contract to begin work.

'24.10 The insurance coverage required by the contract documents shall be in compliance with the laws of the Commonwealth of Kentucky and shall be placed with a licensed resident or non-resident agent who represents insurance companies authorized to do business in Kentucky.

'24.11 The Certificate of Insurance or Certificate's of Insurance will have the following endorsements as an attachment to the Certificate or Certificate's.

'24.11.2 The Commonwealth of Kentucky, Division of Contracting and Administration will be named as an additional insured.

'24.11.3 The policy is primary coverage and any insurance or self-insurance maintained by the Commonwealth of Kentucky shall be excess.

'24.11.4 Any failure of the named insured to comply with the reporting provisions of the policy shall not affect coverage provided to the Commonwealth of Kentucky, it's officers or employees.

'24.11.5 All Coverages. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to Owner.

'25. Performance and Payment Bonds The Contractor shall furnish separate performance and payment bonds to the Owner. The Contractor shall furnish a performance bond satisfactory to the Owner in an amount equal to one hundred percent (100%) of the Contract Sum as security for the faithful performance of the Contract. The Contractor shall also furnish a payment bond satisfactory to the Owner in an amount equal to one hundred percent (100%) of the Contract Sum for the protection of all persons performing labor or furnishing materials, equipment or supplies for the Contractor or his Subcontractor for the performance of the Work provided for in the Contract, including security for payment of all unemployment contributions which become due and payable under Kentucky Unemployment Insurance Law.

Each bond furnished by the Contractor shall incorporate by reference the terms of the Contract as fully as though they were set forth verbatim in such bonds. In the event the Contract Sum is adjusted by Change Order executed by the Contractor, the penal sum of both the performance bond and the payment bond shall be deemed increased by like amount.

The performance and payment bonds shall be executed by a surety company authorized to do business in this Commonwealth, and the contract instrument of bonds must be countersigned by a duly appointed and licensed resident agent.

Unless the Project is exempt from the prevailing wage requirements of KRS 337.505-337.550, the Contractor's bond(s) shall include a provision as will guarantee the faithful performance and payment of the prevailing hourly wage as set forth in the schedule incorporated in the Contract.

'26. Claims by the Contractor/Concealed Conditions/Disputes

'26.1 Claims by the Contractor against the Owner are subject to the following:

'26.1.1 All Contractor claims against the Owner shall be initiated by a written claim submitted to the Owner and the Architect. Such claim shall be filed with the Owner and the Architect no later than seven (7) calendar days after the event, or the first appearance of the circumstances, causing the claim, and same shall set forth in detail all known facts and circumstances supporting the claim;

'26.1.2 The Contractor and the Owner shall continue their performance regardless of the existence of any claims submitted by the Contractor.

'26.1.3 In the event the Contractor discovers previously concealed and unknown site conditions which differ materially from those indicated in the Contract Documents, or unknown site conditions which are materially at variance from those typically and ordinarily encountered in the general geographical location of the Project, the Contract Sum shall be modified, either upward or downward, upon the written claim made by either party within seven (7) calendar days after the first appearance to such party of the circumstances. As a condition precedent to the Owner having any liability to the Contractor due to concealed and unknown conditions, the Contractor must give the Owner and the Architect written notice of, and an opportunity to observe, such condition prior to disturbing it. The failure by the Contractor to give the written notice and make the claim as provided by this paragraph shall constitute a waiver by the Contractor of any rights arising out of or relating to such concealed and unknown condition;

'26.1.4 In the event the Contractor seeks to make a claim for an increase in the Contract Sum, as a

condition precedent to any liability of the Owner therefor, the Contractor shall strictly comply with the requirements of the first paragraph of this Article and such claim shall be made by the Contractor before proceeding to execute any additional or changed Work. Failure of the condition precedent to occur shall constitute a waiver by the Contractor of any claim for additional compensation;

'26.1.5 In connection with any claim by the Contractor against the Owner for compensation in excess of the Contract Sum, any liability of the Owner for the Contractor's cost shall be strictly limited to direct cost incurred by the Contractor and shall in no event include indirect cost or consequential damages of the Contractor.

'26.1.6 The Owner shall not be liable to the Contractor for claims of third-parties including subcontractors, unless and until liability of the Contractor has been established therefor in a court of competent jurisdiction;

'26.2 In the event the Contractor should be delayed in performing any task which at the time of the delay is then critical, or which during the delay becomes critical, as the sole result of any act or omission by the Owner or someone acting in the Owner's behalf, or by Owner-authorized Change Orders, unusually bad weather not reasonably anticipatable, fire or other Acts of God, the date for achieving Substantial Completion, or, as applicable, final completion, shall be appropriately adjusted by the Owner upon the written claim of the Contractor to the Owner and the Architect. An extension of time shall not mean that the Contractor is entitled to additional compensation. A task is critical within the meaning of this paragraph if, and only if, said task is on the critical path of the Project schedule so that a delay in performing such task will delay the ultimate completion of the Project. Any claim for an extension of time by the Contractor shall strictly comply with the requirements of the first paragraph of this Article above. If the Contractor fails to make such claim as required in this paragraph, any claim for an extension of time shall be waived.

'26.3 All claims under this Contract shall be made in accordance with KRS 45A.225 to 45A.290. The provisions of these statutes do not toll the running of the Statute of Limitations set forth in KRS 45A.260. Any suit pursuant to KRS 45A.245 shall be commenced within one (1) year of the Substantial Completion Date specified in the Contract. If the Contractor does not commence suit within one (1) year of the date specified in the Contract, the Contractor shall be foreclosed from proceeding in court pursuant to KRS 45A.245.

The Owner and Contractor agree that any suit, action or proceeding with respect to this Contract may only be brought in or entered by the courts of the Commonwealth of Kentucky situated in Frankfort, Franklin County, Kentucky, or the United States District Court for the Eastern District of Kentucky, Frankfort Division, and the parties hereby submit to the non-exclusive jurisdiction of such courts for the purpose of any such suit, action, proceeding or judgement and waive any other preferential jurisdiction by reason of domicile or location. The parties hereby agree that any such legal action shall be tried by the court sitting without a jury. The parties hereby irrevocably waive any objection that they may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or related to this Contract brought in the courts of the Commonwealth of Kentucky situated in Frankfort, Franklin County, Kentucky, or the United States District Court for the Eastern District of Kentucky, Frankfort Division, and also hereby irrevocably waive any claim that any such suit, action or proceeding brought in any one of the above-described courts has been brought in an inconvenient forum.

'27 **Liens** The filing and perfection of liens for labor, materials, supplies and rental equipment supplied on the work are governed by KRS 376.195 to 376.260.

The lien shall attach only to any unpaid balance or retainage due the Contractor for the improvement from the time a copy of statement of lien, attested by the County Clerk, is delivered to the Owner, pursuant to the

provisions of KRS 376.240

Statements of lien shall be filed with the Franklin County Clerk and action to enforce the same must be instituted in the Franklin Circuit Court, Frankfort, Kentucky, pursuant to KRS 376.250(2).

- '28 **Assignments** Neither party to the Contract shall assign the Contract, or any portion thereof without the written consent of the other, nor shall the Contractor assign any monies due or to become due to him hereunder without notification to the Owner. Notification of Assignments, shall be given on State forms and in accordance with the procedures and regulations of the Finance and Administration Cabinet.
- '29 **Separate Contracts**
- '29.1 **Owner's Right to Perform Construction and to Award Separate Contracts.** The Owner reserves the right to let other contracts in connection with the Project or to perform Work with its own forces. The Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their Work and shall properly connect and coordinate his Work with theirs.
- If any part of the Contractor's Work depends for proper execution or results upon the Work of any other contractor, the Contractor shall promptly report to the Architect any observed defects in such Work that render it unsuitable for proper execution or connection. His failure to inspect and report shall constitute an acceptance of the other contractor's Work as fit and proper for the reception of his Work, except as to defects which may develop in the other contractor's Work after the execution of his Work.
- Whenever Work being done by the Owner's forces or by other contractors is contiguous to Work covered by this Contract, the respective rights of the various interests involved shall be established by the Architect to secure the completion of the various portions of the Work in general harmony.
- '29.2 **Mutual Responsibility of Contractors.** Should the Contractor cause damage to any separate contractor on the Work, the Contractor agrees, upon due notice, to settle with such contractor if he will so settle. If such separate contractor sues the Owner on account of any damage alleged to have been so sustained, the Owner shall notify the Contractor who shall defend such proceedings at the Contractor's expense and if any judgment against the Owner arises therefrom, the Contractor shall pay or satisfy it and pay all costs incurred by the Owner.
- '30 **Cash Allowances** The Contractor shall have included in the Contract Sum all allowances stated in the Contract Documents and shall cause the Work so designated to be done as the Owner may direct. If the actual price for purchasing the "allowed material" is more or less than the "cash allowance," the Contract Sum shall be adjusted accordingly. The adjustment in Contract Sum shall be made on the basis of the purchase price without additional charges for overhead, profit, insurance or any other incidental expenses. The cost of installation of the "allowed materials" shall be included in the applicable sections of the Contract specifications covering this Work.
- '31. **Miscellaneous Provisions Regarding Contractor's Work**
- '31.1 **Project Site Limits.** The Contractor shall confine his apparatus, the storage of materials, and the operations of his workmen to Project site limits indicated by the Contract Documents.
- '31.2 **Points of Reference.** The Contractor shall carefully preserve bench marks, reference points and stakes, and in case of willful or careless destruction, he shall be charged with the resulting expense of replacement and shall be responsible for any mistake that may be caused by their unnecessary loss or disturbance.
- '31.3 **Cutting and Patching.** The Contractor shall be responsible for cutting, fitting or patching required to complete the Project or make its parts fit together in a proper manner. The Contractor shall not

endanger other parts of the Project, including work by the Owner or other contractors as provided in Article 29, by cutting, patching, or excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a separate contractor without written consent of the Owner or such separate contractor. Such consent shall not be unreasonably withheld.

'31.4 Cleanup. The Contractor shall at all times keep the Project premises and surrounding area free from the accumulation of waste materials or rubbish caused by his operations in connection with the Project. Upon completion of the Work, and prior to final inspection and acceptance, the Contractor shall remove all remaining waste materials, rubbish, Contractor's construction equipment, tools, machinery, and surplus materials and leave the Project (including but not limited to glass, hardware, fixtures, masonry, tile and marble) in a clean and usable condition satisfactory to the Architect. Floors shall be cleaned and waxed in accordance with the requirements of the Contract specifications. If the Contractor fails to clean up as provided in the Contract Documents, the Owner may perform the cleaning tasks and charge the cost to the Contractor.

'31.5 Guarantees, Warranties and "As-Built" Drawings. Prior to final payment for the Work, the Contractor shall assemble and present to the Architect all guarantees and warranties required by the Contract Documents. Additionally the Contractor shall provide "Record" Drawings prior to final payment.

'32 Other Miscellaneous Provisions

'32.1 Governing Law. The Contract shall be governed by the laws of the Commonwealth of Kentucky.

'32.2 Statutory Limitation Periods. Statutes of Limitations are governed by KRS 45A.260(2).

'32.3 Written Notice. Written notice shall be deemed to have been given if delivered in person to the individual or to a member of the organization or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last known business address known to the notifying party.

'33 Prevailing Wage Law Requirements

Compliance Required on Covered Projects. In performing the Work, the Contractor and Subcontractors are required to comply with all provisions of the "Act Relating to Contracts for Public Work," KRS 337.505-337.550, except where the Contract meets the exemption requirements for certain public works construction projects as set forth under KRS 337.010 and detailed at the following site:

'33.1 Prevailing Wage

The term "prevailing wage" for each classification of laborers, workmen, and mechanics engaged in the construction of public works within the Commonwealth of Kentucky, means the sum of:

(1) Base rate

The basic hourly rate paid or being paid subsequent to the labor commissioner's most recent wage determination to the majority of laborers, workmen, and mechanics employed in each classification of construction upon reasonably comparable construction in the locality where the work is to be performed.

(2) Fringe rate

An additional amount per hour equal to the hourly rate of contribution **irrevocably made or to be made by an employer on behalf of employees within each classification of construction to a trustee or to a third person** pursuant to an enforceable commitment to carry out a financially responsible plan or program, which was communicated in writing to the employees affected, for the following fringe benefits.

(a) medical or hospital care

(b) pensions on retirement

- (c) death compensation for injuries or illness resulting from occupational activity
- (d) life insurance
- (e) defraying costs of apprenticeship or other similar programs
- (f) cash; the employer may pay an additional amount per hour to the employee in cash or partly in cash and partly by contributions.

Fringe does not include costs associated with programs or taxes required by federal state or local law such as workers' compensation or unemployment insurance tax. Accidental, disability or sickness insurance may be considered a fringe if paid under the conditions as stated in bold letters above. Fringe does not include costs associated with vacation and holiday unless paid as stipulated above in bold lettering or if paid in the form of cash as indicated in stated in (f).

'33.2 Requirement To Pay Prevailing Wages

1. Where a prevailing rate of wages has been determined and prescribed, the contract executed between a public authority and the successful bidder or contractor shall contain a provision requiring the successful bidder and all of his subcontractors to pay not less than the rate of wages so established. The successful bidder or contractor and all subcontractors shall strictly comply with these provisions of the contract.
2. All contractors and subcontractors required by KRS 337.505 to 337.550 and by contracts with any public authority to pay not less than the prevailing rate of wages, shall pay such wages in legal tender without any deductions.

'33.3 Overtime

Any laborer, workman, or mechanic worked in excess of eight (8) hours per day or forty (40) hours per week, except in cases of emergency shall be paid not less than one and one-half (1-1/2) times the basic hourly rate of pay as defined and fixed under this chapter for all overtime worked. This shall not prohibit any laborer, workman, or mechanic from working more than eight (8) hours in one (1) calendar day, but not more than ten (10) hours in one (1) calendar day where the employee and employer enter into an agreement in writing prior to the working of any one (1) day in excess of eight (8) hours, or where provided for in a collective bargaining agreement.

'33.4 Payroll Records

All contractors and subcontractors affected by the terms of KRS 337.505 to 337.550 shall keep full and accurate payroll records covering all disbursements of wages to their employees to whom they are required to pay not less than the prevailing rate of wages. The recordkeeping requirement is:

1. Hours worked each day by each employee
2. Hours worked in each classification of work by each employee
3. Amount paid each employee for his work in each classification.

They shall be open to the inspection and transcript of the commissioner or his authorized representative at any reasonable time, and shall be in compliance with all regulations issued by the commissioner. These payroll records shall not be destroyed or removed from this state for one (1) year following the completion of the improvement in connection with which they are made. This recordkeeping requirement is in addition to the requirement as provided by KRS 337.320 and 803 KAR 1:066.

'33.5 Posting Of Rates

Each contractor and subcontractor subject to the provisions of KRS 337.505 to 337.550 shall post and keep posted in a conspicuous place at the site of the construction work, a copy of the applicable prevailing wage rates for each and every classification involved in the construction of the public works.

'33.6 Inspections

Every employer shall permit the commissioner or his authorized agents to question any of his employees at the site of the public work and during work hours in respect

to the wages paid, hours worked and duties of such employee or other employees.

'34. **Apprentices** Apprentices (for all classifications of work) shall be permitted to work only under an apprenticeship agreement approved by the Kentucky Supervisor of Apprenticeship and by the Kentucky Apprenticeship Council which is recognized by the Bureau of Apprenticeship and Training, U. S. Department of Labor.

'35. **Nondiscrimination in Employment**

During the performance of the Contract, the Contractor agrees as follows:

'35.1 The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin, or disability in employment.

'35.2 The Contractor will take affirmative action in regard to employment, upgrading, demotion, transfer, recruitment, recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, so as to ensure that applicants are employed and that employees during employment are treated without regard to their race, color, religion, sex, age, or national origin; however, when layoffs occur, employees shall be laid off according to seniority with the youngest employees being laid off first. When employees are recalled, this shall be done in the reverse way the employees were laid off;

'35.3 The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, or national origin;

'35.4 The Contractor will post notices in conspicuous places, available to employees and applicants for employment, setting forth the provisions of the nondiscrimination clauses required by this section;

'35.4 The Contractor shall send to each labor union or representatives of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or workers' representatives of the Contractor's commitments under this section.

Failure to comply with the above nondiscrimination clause constitutes material breach of Contract.

'36. **Affirmative Action; Reporting Requirements**

'36.1 The Contractor and Subcontractors are exempt from any affirmative action or reporting requirements, under the Kentucky Equal Employment Act of 1978, KRS 45.560 to 45.640 hereinafter referred to as The Act, if any of the following conditions are applicable:

- (1) the Contract or subcontract awarded is in the amount of two hundred and fifty thousand dollars (\$250,000) or less, and the amount of the contract is not a subterfuge to avoid compliance with the provisions of The Act; or
- (2) the Contractor or Subcontractor utilizes the services of fewer than eight (8) employees during the course of the Contract ; or
- (3) the Contractor or subcontractor employs only family members or relatives; or
- (4) the Contractor or Subcontractor employs only persons having a direct Ownership interest in the business and such interest in not a subterfuge to avoid compliance with the provisions of The Act.

'36.2 The Contractor or Subcontractor not otherwise exempted shall for the duration of the Contract, hire minorities from within the drawing area to satisfy the agreed upon goals and timetables set out in addenda to the Contract. Should the union with which the Contractor has collective bargaining

agreements be unwilling to provide sufficient minorities to satisfy the goals and timetables, the Contractor shall hire minorities from other sources within the drawing area to satisfy the goals and timetables in the addenda to the Contract.

- '36.3 The equal employment provisions of The Act may be met in part by the Contractor subcontracting to a minority contractor or subcontractor . A minority contractor or subcontractor shall be defined by the addenda to this Contract, or if none, by the Act.
- '36.4 Each Contractor shall, for the length of the Contract, furnish such information as required by The Act and by such rules, regulations and orders issued pursuant thereto and will permit access to all books and records pertaining to his employment practices and work sites by the contracting agency and the department for purposes of investigation to ascertain compliance with The Act and such rules, regulations and orders issued pursuant thereto.
- '36.5 If the Contractor is found to have committed an unlawful practice against a provision of The Act during the course of performing under this Contract, (if covered by The Act), the Owner may cancel or terminate the Contract, conditioned upon a program for future compliance approved by the Owner. The Owner may also declare such Contractor ineligible to bid on further contracts until such time as the Contractor complies in full with the requirements of The Act.
- '36.6 The Contractor shall not be required to terminate an existing employee, upon proof that employee was employed prior to the date of the Contract nor hire anyone who fails to demonstrate the minimum skills required to perform a particular job.

'37 **Access to Records** The contractor, as defined in KRS 45A.030(7), agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this contract for the purpose of financial audit or program review. Furthermore, any books, documents, papers, records, or other evidence provided to the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, or the Legislative Research Commission which are directly pertinent to the contract shall be subject to public disclosure regardless of the proprietary nature of the information, unless specific information is identified and exempted and agreed to by the Secretary of the Finance and Administration Cabinet as meeting the provisions of KRS 61.878(1)(c) prior to the execution of the contract. The Secretary of the Finance and Administration Cabinet shall not restrict the public release of any information which would otherwise be subject to public release if a state government agency was providing the service. (22 Ky.R. 1510; eff. 5-16-96.)

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